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S/N 10/620,549

PATENTIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Peter SEITZ	Examiner:	Tamra Dicus
Serial No.:	10/620,549	Group Art Unit:	1774
Filed:	July 16, 2003	Docket No.:	13027.0043US01
Title:	IDENTIFICATION DEVICE AND APPLICATION THEREOF		

CERTIFICATE UNDER 37 CFR 1.6(d):

I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office on February 19, 2008.

By:

Name:

APPELLANT'S BRIEF ON APPEAL

Mail Stop AF  
 Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, Virginia 22313-1450

Sir:

This Brief is presented in support of the Appeal filed October 18, 2007, from the final rejection of Claims 1, 2 and 4-7 of the above-identified application, as set forth in the Office Action mailed June 18, 2007.

Please charge Deposit Account No. 13-2725 in the amount of \$255.00 to cover the required fee for filing this Brief as set forth under 37 C.F.R. §4120(b)(2).

Please charge any additional fees or credit any overpayment to Merchant & Gould P.C., Deposit Account No. 13-2725.

An oral hearing is requested. A separate request for oral hearing with the appropriate fee will be filed within two months of the Examiner's Answer.

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**I. REAL PARTY OF INTEREST**

The real party of interest is Peter SEITZ, Möhlstrasse 29, München, Germany 81675.

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**II. RELATED APPEALS AND INTERFERENCES**

There are no related appeals and interferences.

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### III. STATUS OF CLAIMS

Claims 1-2, 4-7 are pending. Claims 13-18 have been cancelled without prejudice or disclaimer. Claims 1-2, and 4-7 have been rejected and are the subjects of this Appeal. All of the pending claims are listed in the Claims Appendix that follows.

Claims 13-18 stand rejected under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement.

Claims 1-2 and 4-7 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Floyd, U.S. Patent No. 5,454,600, in view of Yamato et al., U.S. Patent No. 5,885,229.

Claims 13-18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Floyd, U.S. Patent No. 5,454,600 in view of Kuboki et al., U.S. Patent No. 6,345,839.

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**IV. STATUS OF AMENDMENTS**

Claims 13-18 have been cancelled without prejudice or disclaimer in an Amendment submitted herewith.

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### V. SUMMARY OF THE CLAIMED SUBJECT MATTER

A summary of the claimed invention follows. The summary includes references to an embodiment disclosed in the specification.

Independent Claim 1 is directed to an identification device worn on a body of a person. *See* the field of the invention in the Abstract, lines 1-5, and the Summary of the Invention, page 2, lines 11-15. The identification device producing an image of a pressure-distribution pattern obtained by sampling pressure during contact between a body part of a person and a substantially solid object. *See* Abstract, lines 9-14. *See* the Summary of the Invention on page 2, lines 15-18. *See* Detailed Description of the Invention on page 5, lines 19-21 and page 6, lines 4-5, and lines 11-13. Claim 1 further recites wherein different pressures at different points on the substantially solid object from the contact between the body part and the substantially solid object are represented in the image by a pressure-distribution pattern arranged to correspond to the different points and having a plurality of colors, wherein the different peak pressures have associated different colors. *See* the Summary of the Invention page 2, line 31-page 3, line 3. Finally, Claim 1 recites that the pressure-distribution pattern is obtained under a foot during walking on the substantially solid object and the pattern is configured to identify a shoe or a portion of the shoe worn by the person. *See* page 3, lines 22-26, page 4, lines 4-7 and Figs. 1-3. *See* also pages 5, lines 19-21 and page 5, line 33-page 6, line 2, and page 6, lines 20-24.

Independent Claim 13 is directed to an identification device worn on the body of a person, but has now been cancelled without prejudice or disclaimer.

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**VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Whether Claims 1-2 and 4-7 are unpatentable under 35 U.S.C. § 103(a) over Floyd, U.S. Patent No. 5,454,600, in view of Yamato et al, U.S. Patent No. 5,885,229.

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### VII. ARGUMENT

In the Office Action, the drawings were objected to, as the pants and person sitting down on an object and a pattern on an item to be worn must be shown or the feature(s) cancelled from the claim(s). Moreover, Claims 13-18 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Claims 13-18 have been cancelled without prejudice or disclaimer. Applicant asserts that the rejection is moot.

Claims 1-2 and 4-7 were rejected under 35 U.S.C. §103(a) as being unpatentable over Floyd, U.S. Patent No. 5,454,600 in view of Yamato et al, U.S. Patent No. 5,885,229.

The Office Action of June 18, 2007 states that Floyd teaches an infinite array of images may be contained in an identification label (col. 4, lines 27-30) on substrates such as fabric, plastic, an article of clothing such a shirt, or similar materials (equivalent to a personal item and cloth, col. 3, lines 25-28, col. 4, line 35). The printed image is applied to a design label, ironed on a shirt for the purpose of identifying the child during an abduction (configured to be worn equivalency). *See* col. 1, lines 5-20 and lines 40-65, col. 2, line 3, lines 20-35 (instant claims 1-2, 4-7). The Office Action further states that Floyd teaches the concept of providing printed pressure-distribution patterns, such as fingerprints, on items for identification purposes. However, Floyd does not teach an image having two-dimensional sampling of a pressure distribution pattern as claimed wherein differently colored and different shaded elements are present or samplings or peak or mean values obtained configured to identify shoes worn by a person (instant claims 1-2, 4-7). Additionally, the Office Action states that Yamato teaches a two-dimensional distribution patterns (sic) printed in different colors obtained by walking by foot as claimed (Abstract, col. 3, lines 10-45, col. 4, lines 1-30).

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The Office Action states that it would have been obvious to one having ordinary skill in the art to have modified the identification label of Floyd to add the two-dimensional printout image of Yamato because Floyd suggests attaching any printed image to a personal item and Yamato teaches a printed pattern illustrating walking patterns obtained via walking as claimed (Abstract, col. 3, lines 35-50, col. 12, lines 32-65, col. 17, lines 20-25, and lines 60-65). Furthermore, pattern choice is a design choice, and given little weight. The Office Action states that thus, in combination, Applicant's invention is taught and that Claims 1-2, 4-7 are addressed. The Action states that patterns are configured to identify a shoe to be worn is an intended use and that it has been held that a recitation with respect to the manner in which a claimed product is intended to be employed does not differentiate the claimed product from a prior art product satisfying the claimed structural limitations.

Finally, with regard to Claims 1 and 7, the Action states that an image is obtained by sampling by walking or impressed by a thermotransfer process for reproducing patterns are process limitations in a product claim. Product-by-process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps. Patentability of an article depends on the article itself and not the method used to produce it (see MPEP 2113). Furthermore, the invention defined by a product-by-process invention is a product not a process. The Action states that it is the patentability of the product claimed and not of the recited process steps that must be established. The Office Action states that both Applicant's and prior art reference's products are the same.

Applicant asserts that the identification device of the present application provides a basic and fundamentally different device than that shown in Floyd, Yamato et al or any combination thereof. Although the Office Action states that Floyd teaches attaching a printed image to a personal item, Applicant asserts that upon careful review of Floyd, it can be seen that this is not true and Floyd actually teaches away from such a limitation. Instead, at col. 4, lines 27-33,

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Floyd expressly emphasizes that the image must include: (1) a fingerprint receiving portion; and (2) once a fingerprint is applied, it blends in with the surrounding scene so as to disguise or camouflage the fingerprint. Moreover, at col. 1, lines 42-47, Floyd explicitly states that the invention is a child- friendly image. Therefore, it is clear that such a child-friendly image would blend in and would be inconspicuous on a child's clothing rather than being used effectively for easy identification.

The Office Action asserts that Yamato et al teaches a two-dimensional pressure distribution pattern printed in different colors obtained by walking by foot. However, upon careful review of Yamato, it is clear that only Fig. 10 has color associated with pressure. Moreover, Applicant asserts that Floyd and Yamato are non-analogous and teach away from combining with one another. Floyd is directed to a label that receives fingerprints and Yamato is directed to assessing walking rather than identification of a foot. The Action states that it would have been obvious to modify the identification label of Floyd to add the two-dimensional printout image of Yamato because Floyd suggests attaching any printed image to a personal item and Yamato teaches an illustrated walking pattern attained by walking as claimed. Applicant asserts that the Yamato patent teaches walking patterns, but not necessarily pressure patterns of the foot. Applicant also asserts that there is no reason that one would consider taking a walking pattern and employing it in any type of identification label.

The pressure pattern of the present invention is directed to identification by employing contact with a shoe to create a unique pressure pattern. The identification is of a shoe's pressure pattern and is a product rather than a process. The Floyd label only receives fingerprints which have built-in lines, whorls and other unique patterns that are not pressure dependent. A fingerprint is unique and can be used for identification. Therefore, Floyd only shows the pattern of the finger rather than a pressure distribution pattern. As Yamato et al does not teach or suggest identification through the pressure differences of a shoe contacting the object, the prior

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art has not arrived at the recited pressure distribution pattern and configured to identify the pressure pattern of a shoe or a portion of a shoe worn by a person.

Applicant asserts that neither of the inventions uses a pressure distribution pattern for identifying the different patterns and different colors identifying different regions from pressure applied from a shoe. Yamato et al does not teach such different colors and is only used for analyzing a patient's walking pattern. Moreover, fingerprints have a unique pattern that can be identified, but differences in pressure are not identified. Applicant asserts that Yamato et al reference is only used for walking patterns and there is no personal identification aspect utilized. One would not look to a system for analyzing walking patterns to utilize the shoe identification label with different color pressures of the system of the present application. Applicant asserts that as Floyd is silent as to pressure distribution and has no need for pressure distribution and is used with bunny labels, and as Yamato et al is used for walking, one of ordinary skill in the art of personal identification using a shoe's pressure pattern would not look from one reference to the other and consider such a combination of drastically fundamentally different technologies to arrive at the recited identification device.

Moreover, Applicant notes that the recited identification device is fundamentally different than any of the cited prior art. Yamato et al teaches children's labels with a fingerprint on them. There is no pressure distribution pattern associated in any way and none is needed, thereby teaching away. Yamato et al uses a walking pattern to analyze walking that has abnormalities that require correction. Pressure distribution and identification on one hand and correcting walking patterns on the other have fundamentally different objectives and approaches. Applicant asserts that Claim 1 patentably distinguishes over the combination of Floyd and Yamato et al or any of the prior art in combination thereof. Applicant request that the rejection under 35 U.S.C. §103(a) of Claims 1-2 and 4-7 be withdrawn. Applicant asserts that Claims 1-2 and 4-7 are allowable and requests that the rejection over Floyd and Yamato et al be withdrawn.

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Claims 13-18 have been cancelled without prejudice or disclaimer. Applicant does not necessarily agree with the rejection of claims 13-18. However, the claims have been cancelled and their rejections are not being appealed at this time.

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## VII. CLAIMS APPENDIX

1. (Previously presented) An identification device worn on a body of a person, the identification device producing an image of a pressure-distribution pattern obtained by sampling pressure during contact between a body part of the person and a substantially solid object, wherein different peak pressures at different points on the substantially solid object from the contact between the body part and the substantially solid object are represented in the image by a pressure-distribution pattern arranged to correspond to the different points and having a plurality of colors, wherein the different peak pressures have associated different colors;  
wherein the pressure-distribution pattern is obtained under a foot during walking on the substantially solid object and the pattern is configured to identify a shoe or a portion of a shoe worn by the person.
2. (Previously Presented) The identification device as claimed in Claim 1, wherein different pressures are represented by area elements that are differently colored.
3. (Cancelled).
4. (Previously Presented) The identification device as claimed in Claim 1, wherein the sampling of the pressure distribution comprises a plurality of samplings of various pressure distributions that occur during the contact between the body part and the substantially solid object.
5. (Previously Presented) The identification device as claimed in Claim 4, wherein the pressure-distribution pattern includes at least one of mean and peak values obtained during the contact between the body part and the substantially solid object.

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6. (Previously Presented) The identification device as claimed in Claim 1, wherein the image is printed on an item to be worn.

7. (Previously Presented) The identification device as claimed in Claim 6, wherein the image is impressed on the item by a thermotransfer process for reproducing patterns.

8-18. (Canceled).

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#### **IV. EVIDENCE APPENDIX**

##### **A. OFFICE ACTIONS AND AMENDMENTS/RESPONSES**

1. Notice of Appeal -- mailed October 18, 2007
2. Final Office Action -- mailed June 18, 2007
3. Amendment -- mailed March 30, 2007
4. Office Action -- mailed November 30, 2006
5. Amendment -- mailed February 19, 2008

##### **B. REFERENCES RELIED UPON BY THE EXAMINER**

1. U.S. Patent No. 5,454,600
2. U.S. Patent No. 5,885,229

##### **C. REFERENCES CITED BY APPELLANTS**

None.

##### **D. CASES CITED IN THE BRIEF**

None.

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**X. RELATED PROCEEDINGS APPENDIX**

None.

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### XI. SUMMARY

Applicant asserts that claims 1, 2 and 4-7 patentably distinguish over the prior art and requests that the Appeal be granted.

Applicant requests that the Board of Appeals overturn the rejection on the grounds of Claims 1-2 and 4-7. If a telephone interview will be helpful in this matter, please contact Applicant's representative at 612.336.4728.

Respectfully submitted,



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